

**FCC MAIL SECTION**

Before the  
Federal Communications Commission  
Washington, D.C. 20554

DISPATCHED

MM Docket No. 96-103

In the Matter of

Amendment of Section 73.202(b), RM-8794  
Table of Allotments,  
FM Broadcast Stations.  
(Smith, Nevada)

**NOTICE OF PROPOSED RULE MAKING**

**Adopted: April 22, 1996;      Released: May 6, 1996**

**Comment Date: June 27, 1996**  
**Reply Comment Date: July 12, 1996**

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Donegal Enterprises, Inc. ("petitioner"), requesting the allotment of Channel 271C3 to Smith, Nevada, as the community's first local aural service. Petitioner states that it will apply for the channel, if allotted.

2. Petitioner states that Smith is an unincorporated place located in the center of Smith Valley, which is within Lyons County, According to the 1990 U.S. Census, Smith is a Census County Division ("CCD") with a population of 641 persons, and Smith Valley is a Census Designated Place ("CDP"), with a population of 1,033 persons.<sup>1</sup> It submits that Smith has its own local zip code and several businesses are located within Smith, such as Smith Valley Aviation, Smith Valley Cattle Feeders and Smith Valley Irrigation. Petitioner states that there is also a volunteer fire department, an elementary and high school, Smith Valley Elementary and Smith Valley High School, respectively, two local churches, Smith Valley United Methodist and St. John the Baptist Roman Catholic, and the Smith Valley Rotary Club.

3. Section 307(b) of the Communications Act of 1934, as amended, mandates that the Commission fairly, equitably, and efficiently distribute frequencies "... among the several States and communities." The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or is listed in the U.S. Census, that is sufficient to dem-

onstrate its status. Although Smith is listed in the U.S. Census as a census county division and not as a "place," we believe that petitioner has demonstrated that Smith has sufficient community attributes to find that it is a community for allotment purposes. Smith has schools, businesses, religious institutions and civic organizations which are normally associated with communities.

**Technical Summary**

4. Channel 271C3 can be allotted to Smith in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.9 kilometers (2.4 miles) east to avoid a short-spacing to Station KSSJ, Channel 270B, Shingle Springs, California.<sup>2</sup>

5. We believe petitioner's proposal warrants consideration since the allotment of Channel 271C3 at Smith can provide the community with its first local aural transmission service. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Smith, Nevada	---	271C3

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **June 27, 1996**, and reply comments on or before **July 12, 1996**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Patrick A. Mulreany, President  
Donegal Enterprises, Inc.  
P.O. Box 123  
Smith, Nevada 89430  
(Petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table

<sup>1</sup> The U.S. Census Bureau defines CCD's as "subdivisions of a county that were delineated by the Census Bureau, in cooperation with State officials and local census statistical areas committees, for statistical purposes. ... The boundaries of CCD's usually are delineated to follow visible features, and in most cases, coincide with census tract or block numbering area boundaries. The name of each CCD is based on a place, county, or well-known local name that identifies its location. ... CCD's have no legal functions and are not governmental units." The U.S. Census Bureau defines CDP's as comprising "densely set-

tled concentrations of population that are identifiable by name, but are not legally incorporated places. Their boundaries, which usually coincide with visible features or the boundary of an adjacent incorporated place, have no legal status, nor do these places have officials elected to serve traditional municipal functions. ... According to the 1995 *Rand McNally Commercial Atlas*, Smith Valley encompasses the "separate community of Smith."

<sup>2</sup> The coordinates for Channel 271C3 at Smith are 38-47-53 North Latitude and 119-16-55 West Longitude.

of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

#### FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

#### APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in

reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.